



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Civil Writ Petition No. 13759/2026
CNR: RJHC010625752026
URN: CW / 25065U / 2026

Roshan Lal S/o Late Shri Mohan Lal Solanki, Aged About 59
Years, Resident Of Sajjan Nagar Chouraha, Main Road, Udaipur,
Rajasthan.

-----Petitioner

Versus

1. Veni Ram S/o Shri Homa Ji Bhil, Resident Of Behind
Neemach Mata Mandir, Rampura, Sisarma, Tehsil Girwa,
District Udaipur, Rajasthan.
2. Udaipur Development Authority, Udaipur, Through Its
Commissioner, Saheli Marg, Udaipur, Rajasthan.
3. Municipal Corporation, Udaipur, Through Its
Commissioner, Town Hall, Udaipur, Rajasthan.

-----Respondents

For Petitioner(s) : Dr. Ashok Kumar Godara
For Respondent(s) : -

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

09/07/2026

1. The present writ petition has been filed under Articles 226
and 227 of the Constitution of India assailing the order dated
30.05.2026 passed by the learned Civil Judge, South City, Udaipur
in Civil Original Suit No.171/2026, whereby the application
preferred by respondent No.1 under Order XXXIX Rule 7 read with
Section 151 CPC has been allowed and an Advocate Commissioner
has been appointed to conduct local inspection of the suit
property.



2. The petitioner has instituted a suit for permanent injunction in respect of an abadi plot forming part of Araj Nos.2441 and 2442 situated at Village Sisarma, Tehsil Girwa, District Udaipur, claiming possession on the strength of a patta dated 07.12.1975 allegedly issued in favour of his late father. Along with the suit, the petitioner sought temporary injunction alleging encroachment by respondent No.1 over a portion of the suit land. The learned Trial Court granted ad interim protection in favour of the petitioner on 26.05.2026.

2.1. Thereafter, respondent No.1 moved an application under Order XXXIX Rule 7 read with Section 151 CPC praying for appointment of a Commissioner to inspect the spot and place on record the existing physical features, measurements and boundaries of the disputed property. The petitioner opposed the application contending that the same was nothing but an attempt to collect evidence through the process of the Court. By the impugned order dated 30.05.2026, the learned Trial Court allowed the application and appointed an Advocate Commissioner to inspect the site in the presence of both parties and submit a report along with measurements and photographs, giving rise to the present writ petition.

3. Learned counsel for the petitioner submitted that the learned Trial Court has committed a manifest error in appointing a Commissioner to determine disputed questions relating to possession, identity, measurement, boundaries and alleged encroachment. It was contended that such matters are required to



be established by the parties by leading independent evidence during trial and cannot be made the subject matter of a commission. It was, therefore, urged that the impugned order travels beyond the scope of Order XXXIX Rule 7 CPC and amounts to permitting respondent No.1 to collect evidence through the agency of the Court.

4. Per contra, learned counsel appearing for respondent No.1 supported the impugned order and submitted that the controversy between the parties essentially pertains to the existing physical condition, measurements and demarcation of the suit property. It was contended that the appointment of a Commissioner is intended only to enable the Court to ascertain the actual state of affairs at the spot so as to facilitate an effective adjudication of the pending application for temporary injunction and does not, in any manner, determine the rights of the parties.

5. I have considered the submissions advanced at the Bar and have perused the impugned order.

6. Perusal of the record reveals that while dealing with the application under Order XXXIX Rule 7 CPC, the learned Trial Court found that the controversy between the parties involved disputes relating to the existing physical condition of the suit property, including its measurements and boundaries, and that the actual position at the site was not sufficiently clear. It is in these circumstances that the learned Trial Court considered it appropriate to appoint an Advocate Commissioner for local



inspection so that the existing factual position could be brought on record before deciding the application for temporary injunction.

6.1. The purpose of appointing a Commissioner under Order XXXIX Rule 7 CPC is not invariably to collect evidence on behalf of either party. The provision empowers the Court, where the circumstances of the case so warrant, to obtain an objective assessment of the existing condition of the property in dispute so as to facilitate an effective adjudication of the issues arising at the interlocutory stage. A report of the Commissioner merely assists the Court in appreciating the factual matrix and does not, by itself, confer or extinguish any substantive right, nor does it relieve either party of its obligation to establish its case by leading admissible evidence during trial.

6.2. In the present case, the application under Order XXXIX Rules 1 and 2 CPC is yet to be finally decided. If, for the purpose of effectively considering the prayer for temporary injunction, the learned Trial Court deemed it appropriate to obtain an objective status report regarding the existing physical features of the suit property through a local inspection, such exercise cannot be said to be either beyond the ambit of Order XXXIX Rule 7 CPC or contrary to any settled principle of law. Rather, the course adopted by the learned Trial Court is intended to assist the Court in arriving at a just and informed conclusion on the interlocutory application.

6.3. The discretion exercised by the learned Trial Court is founded upon relevant considerations and is neither arbitrary nor



capricious. No jurisdictional error, patent illegality or material irregularity is discernible in the impugned order warranting interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

4. Consequently, finding no infirmity in the order dated 30.05.2026 passed by the learned Trial Court, the present writ petition is dismissed.

5. The stay application as well as all pending applications, if any, also stand disposed of.

(FARJAND ALI),J

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